



August 9, 1999

Ms. Lilia Ledesma-Gonzalez
Law Offices of James E. Darling
P.O. Box 5489
McAllen, Texas 78502

OR99-2233

Dear Ms. Ledesma-Gonzalez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127203.

The South Texas Community College (the "college"), which you represent, received a request for the "curriculum vitae of all the newly hired full time, permanent faculty in the English Department." You assert that some of the requested information is confidential under sections 552.102 and 552.117 of the Government Code. You have submitted a representative sample of the requested information.¹

Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the act.² Private facts about an individual are excepted from disclosure under common-law privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure.

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."


Id. at 685; Open Records Decision No. 611 at 1 (1992). We have reviewed the submitted information and conclude that none of it is protected by common-law privacy.

The employees' home addresses and home telephone numbers may be withheld under section 552.117 if the employees have complied with section 552.024. Section 552.117 of the Government Code excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether a public employee has family members when the public employee requests that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold this information of a current or former employee or official who requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold the information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989).

Section 552.024 provides that each employee shall elect whether to allow access to section 552.117 information in a signed writing not later than the 14th day after the date on which the employee begins employment with the governmental body. If an employee fails to state the person's choice within the fourteen days, the information is subject to public access. Gov't Code § 552.024(d). You explain that employees who are new hires have not yet elected under section 552.024. Although they have signed letters of acceptance, the orientation process has not yet commenced. We conclude that the newly hired employees have fourteen days after their employment begins to elect whether to authorize access to information enumerated in section 552.117. If the employees elect to deny access, then you must withhold their home addresses and home telephone numbers from the requested information. If after fourteen days, the newly hired employees fail to elect or elect to allow access, then you must release their home addresses and home telephone numbers from the requested information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Yen-Ha Le', with a stylized flourish at the end.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref: ID# 127203

Encl.: Submitted documents

cc: Ms. Theresa JC. Norman
Texas Faculty Association
South Texas Facility Association
2012 Anacua Circle
Edinburg, Texas 78539
(w/o enclosures)